

EGMR-Seminar

„Subsidiarity: a two-sided coin“ Strasbourg 30.1.2015 Diskussionsbeitrag

Topic 2: The role of national authorities

Mr. President,
Ladies and
Gentlemen,
dear Colleagues,

I would like to thank the European Court of Human Rights – and in particular President *Dean Spielmann* – very cordially for inviting me to this seminar marking the official opening of the judicial year.

Let me make some general comments on the topic of this seminar from the point of view of the Constitutional Court of the Republic of Austria.

Austria is party to the European Convention of Human Rights since 1958. In 1964, this instrument was granted the rank of constitutional law by explicit constitutional order. Thus, the Convention – equal in status to other genuinely national fundamental rights – is directly applicable constitutional law. At the national level, the fundamental rights enshrined in the Convention have the same status and the same importance as other fundamental rights laid down in the Austrian Federal Constitution. This unique form of incorporation of the Convention established a close link between the jurisprudence of the European Court of Human Rights (ECtHR) and the national application and interpretation of the ECHR.

This is particularly true for the Constitutional Court, whose main function is to safeguard the individual rights guaranteed by the Constitution, including the rights and freedoms enshrined in the Convention. Generally speaking, the Convention plays a crucial role in the jurisprudence of the Constitutional Court. Since the 1960s, the Constitutional Court has been referring back to the Convention and to its interpretation by the European Court of Human Rights in a large number of judgments. Moreover, the case-law of the European Court of Human Rights has contributed to the current fundamental rights jurisprudence of the Constitutional Court not only in individual cases, but also in terms of fundamental rights doctrine. In this way, the Constitutional Court has become the main driving force for the incorporation of the Convention in the Austrian legal system.

By being implemented by the Constitutional Court, the Convention and the case-law of the European Court of Human Rights have become a major yardstick for the constitutionality of Austrian legislation. In many cases, judgments of the European Court of Human Rights or of the Constitutional Court concerning the interpretation of the Convention have caused Austrian legislation to be adjusted in the spirit of improving the safeguard of fundamental rights and freedoms. Recent judgments that highlight this influence concern medically assisted reproduction, the principle of non-discrimination with regard to sexual orientation as well as certain issues of asylum and immigration.

It goes without saying that, in some cases, judgments of the European Court of Human Rights have met with some criticism in Austria. This does, however, not in any way change the fact that the jurisprudence of the European Court of Human Rights is recognised as the major source of interpretation of the Convention in Austria. To a great extent, this principle recognition is also enhanced by the case-law of the Constitutional Court.

In European history, the Convention was certainly a groundbreaking step towards European integration. This holds especially for the supranational system of protection of the rights and freedoms laid down in the Convention, overcoming the historical claim that the safeguard of human rights be a national matter only.

We must not allow this globally unique and exemplary achievement to be put in question. On the contrary, we should do everything we can to refine this common legal space set up in terms of fundamental rights. A necessary prerequisite for this is to strengthen the cooperation and the dialogue between the national courts and the European Court of Human Rights. And that is why I consider today's seminar to be most deserving.

Thank you.